

Chesapeake Bay Local Assistance Board  
Monday, September 15, 2003  
James Monroe Building  
101 N. 14<sup>th</sup> Street, Conference Room C  
Richmond, Virginia

Members Present:

Mr. Colin D. Cowling  
Mr. Donald W. Davis  
Mr. Stuart Mendelsohn  
Mr. Daniel B. Nice  
Mr. Michael V. Rodriguez  
Mr. Walter J. Sheffield

Members Absent:

Mr. William E. Duncanson  
Ms. Sue H. Fitz-Hugh  
Mr. David C. Froggatt, Jr.

Staff Present:

Acting Executive Director, C. Scott Crafton  
Administrative Assistant, Carolyn J. Elliott  
Chief of Environmental Planning, Martha Little  
Principal Environmental Planner, Shawn Smith  
Principal Environmental Planner, Heather Mackey  
Principal Environmental Planner, Ryan Link  
Senior Environmental Planner, Alex Adams  
Senior Environmental Planner, Beth Baldwin  
Senior Environmental Planner, Brad Below  
Senior Environmental Planner, Nancy Miller

Mr. Davis called the meeting to order at 10:10 a.m. He welcomed guests, and introduced new Board members Michael Rodriguez and Walter Sheffield. He called the role, noting that there was a quorum.

Mr. Davis called for the approval of the June 16, 2003 Board meeting minutes. Mr. Nice motioned and Mr. Cowling seconded. Mr. Davis called for further comments. There were none. He called for the vote. All members voted aye.

Mr. Crafton next presented the Executive Director's report. He advised that the last couple of months have been very busy for him and agency staff. He said in addition to routine agency activities, he was involved in supporting the Governor's Natural Resource Partnership Agenda. He explained two specific commitments that have taken a lot of his time: (1) streamlining and improving the delivery of State stormwater management programs, and (2) providing support to discussions by the Governor's Natural Resource Funding Commission. He said both of these efforts will result in reports to the Governor, with specific recommendations, to be submitted within the next several weeks.

He said that he and other Natural Resource agency heads will participate as members of the Natural Resource Partnership Council, and the membership is composed of selected summit participants representing a variety of stakeholder interests. He noted the Partnership Council held their first meeting about 10 days ago.

Mr. Crafton advised that CBLAD staff has also participated in a Low Impact Development Task Force, created by the General Assembly and facilitated by DEQ, and a separate LID task force coordinated by the U.S. Army Corp of Engineers. He also said staff is involved with budget preparation for the next biennium.

Mr. Crafton welcomed and introduced new Board member, Mr. Walter Sheffield, who replaced former Chairman Frank Benser, representing the local governments in the RADCO region, Planning District 16, around Fredericksburg. Mr. Sheffield is practicing attorney, and former Vice Mayor of the City of Fredericksburg, Virginia. Prior to holding elected office there, he served as Fredericksburg's City Attorney for many years. He is a graduate of Old Dominion University (B.A.), Emory University (J.D.), and New York University (L.L.M.). Mr. Sheffield serves with number of historic preservation and other civic organizations and will serve until 2007.

He introduced new Board member, Mr. Michael Rodriguez, who represents the localities within the Southeastern Portion of the Hampton Roads Planning District Commission, Planning District 23. Mr. Rodriguez is Vice President and Treasurer for Bay Mechanical, Inc., and serves on the Board's of the Samaritan House and the Virginia Beach Vision, Inc. He is a graduate of Radford University (B.S. Business Finance), and will serve until 2007.

Mr. Crafton said that Mr. Bill Duncanson could not attend because, in his role as Richmond County's Emergency Services Coordinator, he was preparing the County for potential impacts from Hurricane Isabel. He advised that Mr. Duncanson represents the localities within the Northern Neck Planning District Commission, Planning District 17. He went on to say Mr. Duncanson is currently the County Administrator for Richmond County, and also serves on the Board of the Northern Neck Chesapeake Bay Region Partnership. He was formerly the County's Planning and Zoning Administrator and has worked with the Bay Act program since its inception. Mr. Duncanson has also served recently on the ad hoc work group helping develop the perennial stream guidance. He is a graduate of Virginia Commonwealth University (B.S. Biology), and will serve until 2007.

Mr. Crafton noted that he had with him the resolutions commemorating the service of three former Board members, Messrs. Bannach and Benser, and Ms. Bamforth, whose terms expired on July 1, 2003. He asked each member to sign each of the resolutions so they could be given to the former members.

Mr. Crafton advised that two new principal planners Heather Mackey and Ryan Link, had been hired since the last meeting. He explained that the Department is also in the process of completing the recruitment process for an environmental engineer and a senior planner. He said with these hires, the agency will have the maximum number of employees that the agency can afford to hire at present. He also said funding for a couple of vacant positions is being diverted

to pay for the final year of the Polecat Creek Water Quality Monitoring Project. He explained that this action is being taken assuming new funding is not approved next session to continue the project. He said that he is keeping an additional position vacant for now, until it is known whether there will be any further budget reductions.

Mr. Crafton noted that, since CBLAD has had such turnover among staff, Mr. Davis asked that staff be presented at the meeting for introductions. He asked all staff members to introduce themselves and provide a brief overview of the localities they represented.

Mr. Crafton said that he had made two notable presentations during the past month. The first was to the King George Builders Association to discuss the proposed Buffer Manual and answer questions. The second was to the Lower Hampton Roads Chamber of Commerce regarding the City of Chesapeake's proposed Bay Act ordinance amendments.

Mr. Crafton closed his comments noting there were a number of local program reviews on the agenda and two Local Program Compliance Evaluations. He also advised that four Guidance Documents were being presented for approval that were reviewed and discussed by the Policy Committee at their meeting on August 26<sup>th</sup>. He explained the Perennial Stream and Mapping documents were developed with input from a stakeholder advisory committee facilitated by Assistant Secretary of Natural Resources Russ Baxter, and the Buffer Modification and Mitigation Guidance Manual was the subject of extensive public comments and had undergone significant revisions since the June meeting.

Mr. Crafton concluded his report by asking if there were any questions. There were none.

Mr. Davis thanked Mr. Crafton for his report and called for the presentation of Local Program Reviews, Phase 1. He recognized Ms. Shawn Smith for staff's presentation for the Town of Quantico.

Ms. Smith stated that the Town of Quantico adopted its revised Phase I program on April 10, 2003. She said the Department worked with the Town in developing the revised ordinance and further, that staff had no recommendations for consistency. She provided a brief overview of the Town's revised program, noting that the Town did not revise its original CBPA map, but that it had included the requirement for onsite determination of water bodies with perennial flow as required under the regulations. She also stated that the Town had identified the Town's Planning Commission as the body to hear formal exception requests, should that need arise.

Ms. Smith stated that at its August 12, 2003 meeting, the Northern Area Review Committee recommended that the Town's revised Phase I program be found consistent.

Mr. Davis called for a motion. Mr. Mendelsohn motioned to find the Town of Quantico's amended Phase I program consistent with §10.1-2109 of the Act and §§9VAC10-20-60 1 and 2 of the Regulations.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

September 15, 2003  
RESOLUTION  
LOCAL PROGRAM, PHASE I  
TOWN OF QUANTICO #66  
Modification – Consistent

WHEREAS § 10.1-2109 of the Chesapeake Bay Preservation Act states that counties, cities, and towns in Tidewater Virginia shall designate Chesapeake Bay Preservation Areas and incorporate protection of the quality of state waters in Chesapeake Bay Preservation Areas into local plans and ordinances; and

WHEREAS § 9VAC10-20-60 of the Chesapeake Bay Preservation Area Designation and Management Regulations states that the elements in subsections 1(a map delineating Chesapeake Bay Preservation Areas) and 2 (performance criteria applying in Chesapeake Bay Preservation Areas) shall be adopted by local governments; and

WHEREAS Town adopted a local Phase I program on November 12, 1992, and

WHEREAS on February 25, 1993, the Town's Phase I program was found consistent by the Chesapeake Bay Local Assistance Board, and

WHEREAS on December 10, 2001, the Chesapeake Bay Local Assistance Board adopted revisions to the Chesapeake Bay Preservation Area Designation and Management Regulations and set March 1, 2003 as the deadline for local governments to adopt revisions to their local ordinances; and

WHEREAS on February 18, 2003, the Chesapeake Bay Local Assistance Board extended the compliance deadline from March 1, 2003 to December 31, 2003, and

WHEREAS the Town of Quantico adopted a revised local program to comply with §§ 9VAC10-20-60 1 and 2 of the Regulations on April 10 2003; and

WHEREAS the Chesapeake Bay Local Assistance Board has adopted *Procedural Policies for Local Program Review* which addresses, among other items, review of modifications to local programs; and

WHEREAS staff reviewed the amendments made to the Town of Quantico's revised program for consistency with the Act and Regulations; and

WHEREAS on August 12, 2003 the Local Program Review Committee for the Northern Area considered and evaluated the information contained in the staff report and concurred with the staff recommendation as outlined in the staff report; and,

WHEREAS after considering and evaluating the information presented on this date, the Board agrees with the recommendation in the staff report and of the Review Committee; now,

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds the Town of Quantico's revised Phase I program consistent with §10.1-2109 of the Act and §§ 9VAC10-20-60 1 and 2 of the Regulations.

The Director of the Chesapeake Bay Local Assistance Department certifies that this resolution was adopted in open session on September 15, 2003 by the Chesapeake Bay Local Assistance Board.

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C. Scott Crafton  
Executive Director  
Chesapeake Bay Local Assistance Department

Mr. Nice seconded the motion.

Mr. Davis for further comments. There were none.

Mr. Davis called for the vote. All members voted aye. Mr. Davis noted that the motion carried.

Mr. Davis recognized Ms. Nancy Miller for staff's presentation for King & Queen County.

Ms. Miller noted that Mr. Paul Koll, King and Queen County Zoning Administrator, was present and available to help answer any questions. She advised that the Board originally found the County's Phase I program consistent on September 26, 1996. She said that the Board adopted amendments to the Regulations, and the County, in consultation with the Department, developed and adopted revisions to its program on February 10, and June 9, 2003.

Ms. Miller continued noting the County's CBPA Overlay District revisions addressed all required changes. She said the County maintained its CBPA criteria so there was no change in the designated CBPAs, and the CBPA Overlay District requirements applied to a majority of the land area in the County.

Ms. Miller explained that most of the County's development is reliant on on-site septic systems. She said the CBPA Overlay District retained the requirements for a pump-out every five years and also the requirement to have a 100 percent reserve drainfield. She said the County adopted amendments that would allow the option of installing a plastic filter or obtaining an inspection certifying the system did not need pump-out as alternatives to the pump-out requirement.

Ms. Miller went on to explain that the County requires an approved site plan, in order to ensure that development minimizes land disturbance, impervious cover and preserves vegetation, and that the County also requires that the limits of land disturbance be physically marked on the development site.

Ms. Miller concluded her comments advising that King and Queen County's amended Phase I program addressed all required amendments and the Department has no recommendations for consistency. Ms. Miller told the Board that the County was to be commended for adopting its revised Phase I program well ahead of the December 31, 2003 deadline, and staff recommended the local program amendments adopted by King and Queen County on February 10, 2003 and June 9, 2003 be found consistent with the Act and Regulations.

Mr. Davis asked Mr. Paul Koll, Zoning Administrator, if he would like to comment. Mr. Koll declined.

Mr. Davis called for a motion. Mr. Mendelsohn motioned to find King & Queen County's amended Phase I program consistent with §10.1-2109 of the Act and §§9VAC10-20-60 1 and 2 of the Regulations.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD  
September 15, 2003  
RESOLUTION  
LOCAL PROGRAM, PHASE I  
KING AND QUEEN COUNTY #43  
Modification – Consistent

WHEREAS § 10.1-2109 of the Chesapeake Bay Preservation Act states that counties, cities, and towns in Tidewater Virginia shall designate Chesapeake Bay Preservation Areas and incorporate protection of the quality of state waters in Chesapeake Bay Preservation Areas into local plans and ordinances; and

WHEREAS § 9VAC10-20-60 of the Chesapeake Bay Preservation Area Designation and Management Regulations states that the elements in subsections 1(a map delineating Chesapeake Bay Preservation Areas) and 2 (performance criteria applying in Chesapeake Bay Preservation Areas) shall be adopted by local governments; and

WHEREAS King and Queen County adopted a local Phase I program on November 14, 1991, and amended it on July 8, 1996, and

WHEREAS on September 26, 1996, the County's Phase I program was found consistent by the Chesapeake Bay Local Assistance Board, and

WHEREAS on December 10, 2001, the Chesapeake Bay Local Assistance Board adopted revisions to the Chesapeake Bay Preservation Area Designation and Management Regulations and set March 1, 2003 as the deadline for local governments to adopt revisions to their local ordinances; and

WHEREAS on February 18, 2003, the Chesapeake Bay Local Assistance Board extended the compliance deadline from March 1, 2003 to December 31, 2003, and

WHEREAS King and Queen County adopted a revised local program to comply with §§ 9VAC10-20-60 1 and 2 of the Regulations on June 9, 2003; and

WHEREAS the Chesapeake Bay Local Assistance Board has adopted *Procedural Policies for Local Program Review* which addresses, among other items, review of modifications to local programs; and

WHEREAS staff reviewed the amendments made to King and Queen County's revised program for consistency with the Act and Regulations; and

WHEREAS on August 12, 2003 the Local Program Review Committee for the Northern Area considered and evaluated the information contained in the staff report and concurred with the staff recommendation as outlined in the staff report; and,

WHEREAS after considering and evaluating the information presented on this date, the Board agrees with the recommendation in the staff report and of the Review Committee; now,

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds King and Queen County's revised Phase I program consistent with §10.1-2109 of the Act and §§ 9VAC10-20-60 1 and 2 of the Regulations.

The Director of the Chesapeake Bay Local Assistance Department certifies that this resolution was adopted in open session on September 15, 2003 by the Chesapeake Bay Local Assistance Board.

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C. Scott Crafton  
Executive Director  
Chesapeake Bay Local Assistance Department

Mr. Cowling seconded the motion.

Mr. Davis called for further discussion. There was none.

Mr. Davis called for the vote. All members voted aye. Mr. Davis noted that the motion carried.

Mr. Davis recognized Ms. Beth Baldwin for staff's presentation for Westmoreland County, and explained that all of the programs being presented had been recommended for approval by either the Northern or Southern Area Review Committees.

Ms. Baldwin provided a brief history of the County's program noting that Westmoreland County adopted its revised Phase I program on March 10, 2003. She continued by stating that although CBLAD had sent an initial mark up of the proposed changes to Westmoreland's ordinance in August of 2002, Department staff had not provided any further review before the County adopted.

She pointed out that the staff report noted nine conditions for consistency, and that the County had agreed to adopt the required changes by December 31, 2003. Consequently, she does not believe the current inconsistencies will hinder the County with implementation of its Bay Act program.

Ms. Baldwin explained the conditions for consistency were categorized into five general areas. The first area related to definitions. She recommended that the words *substantial alteration* and *public road* be included in the County's ordinance since these definitions are important for assisting in the interpretation of certain sections of the ordinance.

She stated there are several recommendations regarding the RPA designation and development criteria. She outlined these recommendations by explaining the phrase water body with perennial flow should replace the phrase tributary stream in a number of places in the Ordinance. She also noted the criteria for water-dependent development and redevelopment must be included, and a site-specific determination of the RPA should be performed in accordance with a water quality impact assessment if the plan of development process is not applicable.

With respect to nonconforming structures, Ms. Baldwin stated that Westmoreland did not include the required findings for expansion of such principal structures, and the ordinance did not make it clear that administrative review for expansion of nonconforming principal structures may not be applied to the expansion of accessory structures.

She continued by saying that Westmoreland County must redraft the ordinance section on exemptions and exceptions to address the requirements of the Regulations. For exemptions, she said the County did not distinguish between large-scale utilities versus those that are locally owned or permitted and explained that since in the Regulations specific criteria apply to the different types of utilities, the County's ordinance should also make that distinction.

Finally, for exceptions, she said that it is not clear in the ordinance that all the required findings for granting an exception would be applied, and that the ordinance must be amended to clarify what findings must be met for any formal exception request. She also said the Department suggests that the County consider allowing an administrative review process for granting those exceptions not related to the RPA as permitted by the Regulations.

Ms. Baldwin stated the Northern Area Review Committee concurred with staff recommendations at their August 12, 2003 meeting, and the Department recommended that these nine conditions be met by December 31, 2003.

Ms. Baldwin asked if there were any questions. Mr. Davis asked what the response had been from the County regarding the exception process and not having to review all the requests through the administration policy.

Ms. Baldwin responded that Westmoreland County was one of the first localities to adopt and in this timeframe, may not have allowed adequate time for reviewing the proposed revisions.

She understood they planned to allow the administrative process for granting exceptions where allowed.

Mr. Mendelsohn questioned whether the conditions were acceptable to Westmoreland County. Ms. Baldwin responded that Westmoreland had agreed to the conditions.

Mr. Davis called for further questions. There were none.

Mr. Davis called for a motion.

Mr. Mendelsohn motioned to Westmoreland County's amended Phase I program consistent with §10.1-2109 of the Act and §§9VAC10-20-60 1 and 2 of the Regulations subject to the condition that Westmoreland County undertake and complete the nine recommendations contained in the staff report no later than December 31, 2003.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD  
September 15, 2003  
RESOLUTION  
LOCAL PROGRAM, PHASE I  
WESTMORELAND COUNTY - #04  
Modification – Conditional

WHEREAS § 10.1-2109 of the Chesapeake Bay Preservation Act states that counties, cities, and towns in Tidewater Virginia shall designate Chesapeake Bay Preservation Areas and incorporate protection of the quality of state waters in Chesapeake Bay Preservation Areas into local plans and ordinances; and

WHEREAS § 9VAC10-20-60 of the Chesapeake Bay Preservation Area Designation and Management Regulations states that the elements in subsections 1(a map delineating Chesapeake Bay Preservation Areas) and 2 (performance criteria applying in Chesapeake Bay Preservation Areas) shall be adopted by local governments; and

WHEREAS Westmoreland County adopted a local Phase I program on September 12, 1990, and

WHEREAS on January 25, 1991, Westmoreland County's Phase I program was found consistent by the Chesapeake Bay Local Assistance Board, and

WHEREAS on December 10, 2001, the Chesapeake Bay Local Assistance Board adopted revisions to the Chesapeake Bay Preservation Area Designation and Management Regulations and set March 1, 2003 as the deadline for local governments to adopt revisions to their local ordinances; and

WHEREAS on February 18, 2003, the Chesapeake Bay Local Assistance Board extended the compliance deadline from March 1, 2003 to December 31, 2003, and

WHEREAS Westmoreland County adopted a revised local program to comply with § 9VAC10-20-60 1 and 2 of the Regulations on March 10, 2003; and

WHEREAS the Chesapeake Bay Local Assistance Board has adopted *Procedural Policies for Local Program Review* which addresses, among other items, review of modifications to local programs; and

WHEREAS staff reviewed the amendments made to Westmoreland County's revised program for consistency with the Act and Regulations; and

WHEREAS on August 12, 2003 the Local Program Review Committee for the Northern Area considered and evaluated the information contained in the staff report and concurred with the staff recommendation as outlined in the staff report; and,

WHEREAS after considering and evaluating the information presented on this date, the Board agrees with the recommendation in the staff report and of the Review Committee; now,

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds Westmoreland County's revised Phase I program consistent with §10.1-2109 of the Act and §§ 9VAC10-20-60 1 and 2 of the Regulations subject to the following condition that the County undertake and complete the following nine recommendations no later than December 31, 2003:

Amend Section 7-4 to provide for a definition of "substantial alteration" that is consistent with the definition set forth in § 9 VAC 10-20-40 of the Regulations.

2. Amend Section 7-10.A to require that site-specific determinations be made either through the plan of development review process or through the review of a water quality impact assessment.

3. Revise Section 7-4; Section 7-5.A.1.b; Section 7-5.A.1.e; and Section 7-11.C to replace "tributary stream" or "at or near the shoreline" with either "water bodies with perennial flow" or "water body with perennial flow," whichever is grammatically correct.

Amend Section 7-8.B to be consistent with §§ 9 VAC 10-20-130.1.b and 9 VAC 10-20-130.1.c. of the Regulations.

Amend Section 7-14 for consistency with §§ 9 VAC 10-20-150.A and 9 VAC 10-20-150.C.4 of the Regulations.

Amend Section 7-16 to be consistent with § 9 VAC 10-20-150.C.1 of the Regulations.

Add a definition of "public roads" into Section 7-4 that is consistent with § 9 VAC 10-20-40 of the Regulations.

Amend Section 7-15 by adding a new subsection that is consistent with § 9 VAC 10-20-150.B.1 of the Regulations.

Amend existing Section 7-15.A to be renumbered as Section 7-15.B and revise for consistency with § 9 VAC 10-20-150.B.2 of the Regulations and delete existing section 7-15.A and then change subsequent subsections accordingly.

BE IT FINALLY RESOLVED that failure by Westmoreland County to meet the above established compliance date of December 31, 2003 will result in the local program becoming inconsistent with § 10.1-2109 of the Act and §§ 9VAC10-20-60.1 and 2 of the Regulations and subject Westmoreland County to the compliance provisions as set forth in §10.1-2103.10 of the Act and §9VAC10-20-250 of the Regulations.

The Director of the Chesapeake Bay Local Assistance Department certifies that this resolution was adopted in open session on September 15, 2003 by the Chesapeake Bay Local Assistance Board.

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C. Scott Crafton  
Executive Director  
Chesapeake Bay Local Assistance Department

Mr. Cowling seconded the motion.

Mr. Davis called for the vote. All members voted aye. Mr. Davis commented that the motion carried.

Mr. Davis recognized Mr. Alex Adams for staff's presentation for King George County.

Mr. Adams said that King George County adopted its revised Phase I program on February 18, 2003. He said the Department has worked closely with Mr. Jack Green developing the revised ordinance, and the Northern Area Review Committee considered the County's revised program on May 13, 2003, when staff recommended two items for consistency.

He explained that the resolution was tabled at the June 16, 2003 Board meeting to allow King George to make the necessary ordinance changes to become fully compliant. He said on July 15, 2003, the King George Board of Supervisors amended its ordinance to become fully compliant, and the Northern Area Review Committee agreed with staff's recommendation for full consistency.

Mr. Mendelsohn asked if he understood that King George County was provided another opportunity to correct their ordinance and that was the reason their program had been tabled at the last meeting.

Mr. Adams responded that was correct and explained when their program came before the Northern Area Review Committee, the County had two conditions. Their program was tabled at that time in order for them to make the changes.

Mr. Davis called for further questions. There were none.

Mr. Davis called for a motion. Mr. Cowling motioned to find King George's amended Phase I program be found consistent with §10.1-2109 of the Act and §§9VAC10-20-60 1 and 2 of the Regulations.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

September 15, 2003

RESOLUTION

LOCAL PROGRAM, PHASE I

KING GEORGE COUNTY # 24

Modification – Consistent

WHEREAS § 10.1-2109 of the Chesapeake Bay Preservation Act states that counties, cities, and towns in Tidewater Virginia shall designate Chesapeake Bay Preservation Areas and incorporate protection of the quality of state waters in Chesapeake Bay Preservation Areas into local plans and ordinances; and

WHEREAS § 9VAC10-20-60 of the Chesapeake Bay Preservation Area Designation and Management Regulations states that the elements in subsections 1(a map delineating Chesapeake Bay Preservation Areas) and 2 (performance criteria applying in Chesapeake Bay Preservation Areas) shall be adopted by local governments; and

WHEREAS King George County adopted a local Phase I program on March 5, 1991, and

WHEREAS on July 24, 1991, the Town's revised Phase I program was found consistent by the Chesapeake Bay Local Assistance Board, and

WHEREAS on December 10, 2001, the Chesapeake Bay Local Assistance Board adopted revisions to the Chesapeake Bay Preservation Area Designation and Management Regulations and set March 1, 2003 as the deadline for local governments to adopt revisions to their local ordinances; and

WHEREAS on February 18, 2003, the Chesapeake Bay Local Assistance Board extended the compliance deadline from March 1, 2003 to December 31, 2003, and

WHEREAS King George County adopted a revised local program to comply with §§ 9VAC10-20-60 1 and 2 of the Regulations on July 15, 2003; and

WHEREAS the Chesapeake Bay Local Assistance Board has adopted *Procedural Policies for Local Program Review* which addresses, among other items, review of modifications to local programs; and

WHEREAS staff reviewed the amendments made to King George County's revised program for consistency with the Act and Regulations; and

WHEREAS on August 12, 2003 the Local Program Review Committee for the Northern Area considered and evaluated the information contained in the staff report and concurred with the staff recommendation as outlined in the staff report; and,

WHEREAS after considering and evaluating the information presented on this date, the Board agrees with the recommendation in the staff report and of the Review Committee; now,

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds King George County's revised Phase I program consistent with §10.1-2109 of the Act and §§ 9VAC10-20-60 1 and 2 of the Regulations.

The Director of the Chesapeake Bay Local Assistance Department certifies that the Chesapeake Bay Local Assistance Board adopted this resolution in open session on September 15, 2003.

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C. Scott Crafton  
Executive Director  
Chesapeake Bay Local Assistance Department

Mr. Mendelsohn seconded the motion.

Mr. Davis called for the vote. All members voted aye.

Mr. Davis recognized Ms. Shawn Smith for staff's presentation for the Town of Onancock.

Ms. Smith noted that there was no one present from the Town of Onancock, and opened her remarks by advising the Town adopted their revised Phase I program on June 23, 2003. She said the Department worked with the Town in developing the revised ordinance and there were no recommendations for consistency.

Ms. Smith provided a brief overview of the Town's revised program, stating that the Town did not revise its original CBPA map, including its original IDA adjacent to the Town harbor area, but did include the requirement for onsite determinations for water bodies with perennial flow as required under the Regulations. She noted that the Town's Planning Commission was named as the body to hear formal exception requests.

Ms. Smith asked if there were any questions. Mr. Davis asked about the exception requests coming before the Planning Commission, is the Town's ordinance was stand-alone ordinance or is it was included in the zoning ordinance.

Ms. Smith responded that it was a part of the Town's Zoning Ordinance.

Mr. Davis called for a motion. Mr. Nice motioned to find the Town of Onancock's amended Phase I program consistent with §10.1-2109 of the Act and § 9 VAC10-20-60 1 and 2 of the Regulations.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

September 15, 2003

RESOLUTION

LOCAL PROGRAM, PHASE I

TOWN OF ONANCOCK #69

Modification – Consistent

WHEREAS § 10.1-2109 of the Chesapeake Bay Preservation Act states that counties, cities, and towns in Tidewater Virginia shall designate Chesapeake Bay Preservation Areas and incorporate protection of the quality of state waters in Chesapeake Bay Preservation Areas into local plans and ordinances; and

WHEREAS § 9VAC10-20-60 of the Chesapeake Bay Preservation Area Designation and Management Regulations states that the elements in subsections 1(a map delineating Chesapeake Bay Preservation Areas) and 2 (performance criteria applying in Chesapeake Bay Preservation Areas) shall be adopted by local governments; and

WHEREAS Town adopted a local Phase I program on March 26, 1993, and amended on April 25, 1994, March 24, 1997 and July 14, 1997, and

WHEREAS on December 15, 1997, the Town's Phase I program was found consistent by the Chesapeake Bay Local Assistance Board, and

WHEREAS on December 10, 2001, the Chesapeake Bay Local Assistance Board adopted revisions to the Chesapeake Bay Preservation Area Designation and Management Regulations and set March 1, 2003 as the deadline for local governments to adopt revisions to their local ordinances; and

WHEREAS on February 18, 2003, the Chesapeake Bay Local Assistance Board extended the compliance deadline from March 1, 2003 to December 31, 2003, and

WHEREAS the Town of Onancock adopted a revised local program to comply with §§ 9VAC10-20-60 1 and 2 of the Regulations on June 23, 2003; and

WHEREAS the Chesapeake Bay Local Assistance Board has adopted *Procedural Policies for Local Program Review* which addresses, among other items, review of modifications to local programs; and

WHEREAS staff reviewed the amendments made to the Town of Onancock's revised program for consistency with the Act and Regulations; and

WHEREAS on August 12, 2003 the Local Program Review Committee for the Southern Area considered and evaluated the information contained in the staff report and concurred with the staff recommendation as outlined in the staff report; and,

WHEREAS after considering and evaluating the information presented on this date, the Board agrees with the recommendation in the staff report and of the Review Committee; now,

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds the Town of Onancock's revised Phase I program consistent with §10.1-2109 of the Act and §§ 9VAC10-20-60 1 and 2 of the Regulations.

The Director of the Chesapeake Bay Local Assistance Department certifies that this resolution was adopted in open session on September 15, 2003 by the Chesapeake Bay Local Assistance Board.

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C. Scott Crafton  
Executive Director  
Chesapeake Bay Local Assistance Department

Mr. Mendelsohn seconded the motion. Mr. Davis called for the vote. All members voted aye.

Mr. Davis called for the presentation of Phase II programs and recognized Mr. Brad Belo for staff's presentation for the Town of Smithfield.

Mr. Belo opened his comments noting that on September 18, 2002, the Board found the Town of Smithfield's comprehensive plan consistent with seven conditions relating to physical constraints to development, protection to the potable water supply, shoreline and stream-bank erosion control, and public and private access to waterfront areas. He said that after review of the Town's Comprehensive Plan amendments that were adopted by the Town Council on March 4, 2003, staff found the Town's Phase II program adequately addressed the seven conditions set by the Board. He went on to say that at the August 12, 2003, the Southern Area Review Committee agreed with the staff analysis and recommended that the Town of Smithfield's amended Phase II program be found consistent with the Chesapeake Bay Act and Regulations.

Mr. Davis asked if there were any questions of Mr. Belo. There were none.

Mr. Davis called for a motion. Mr. Cowling motioned to find the Town of Smithfield's amended Phase II program consistent with §10.1-2109 of the Act and § 9VAC10-20-60.3 of the Regulations.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD  
September 15, 2003  
RESOLUTION  
LOCAL PROGRAM - PHASE II  
TOWN OF SMITHFIELD - #81

Determination of Consistency - Consistent

WHEREAS § 10.1-2109 of the Chesapeake Bay Preservation Act states that counties, cities, and towns in Tidewater Virginia shall incorporate protection of the quality of state waters into each locality's comprehensive plan; and

WHEREAS § 9VAC10-20-60 of the Chesapeake Bay Preservation Area Designation and Management Regulations states that the element in subsection 3 shall be adopted by local governments; and

WHEREAS § 10.1-2103.10 of the Chesapeake Bay Preservation Act authorizes the Board to take administrative and legal actions to ensure compliance by counties, cities, and towns with the provisions of the Act; and

WHEREAS the Town of Smithfield adopted a Comprehensive Plan in 1999; and

WHEREAS on September 18, 2000 the Chesapeake Bay Local Assistance Board found the Town of Smithfield's plan consistent with seven recommendations for consistency that were to be addressed by the Town and set a compliance date of December 31, 2002; and

WHEREAS the Town Council for the Town of Smithfield adopted a comprehensive plan amendment on March 4, 2003; and

WHEREAS staff has reviewed the Town of Smithfield's comprehensive plan amendment for consistency with the previous consistency recommendations and the Act and Regulations; and

WHEREAS on August 12, 2003 the Local Program Review Committee for the Southern Area considered and evaluated the information contained in the staff report and concurred with the staff recommendation as outlined in the staff report; and

WHEREAS after considering and evaluating the information presented on this date, the Board agrees with the recommendations in the staff report and of the Review Committee; now

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds the Town of Smithfield's comprehensive plan consistent with § 10.1-2109 of the Act and § 9VAC10-20-60.3 of the Regulations.

The Director of the Chesapeake Bay Local Assistance Department certifies that the Chesapeake Bay Local Assistance Board adopted this resolution in open session on September 15, 2003.

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C. Scott Crafton  
Executive Director  
Chesapeake Bay Local Assistance Department

Mr. Mendelsohn seconded the motion. Mr. Davis called for the vote. All members voted aye.

Mr. Davis asked Mr. Belo to continue with staff's presentation for the City of Norfolk. Mr. Belo introduced Ms. Barbara Morales, Bay Act administrator for the City of Norfolk.

Mr. Belo advised that in 1999, the Board established a Phase II program consistency deadline of December 31, 2001 for the City of Norfolk, and that deadline was subsequently extended to December 31, 2002. He explained that after reviewing several of the City's land use plan documents, including the City's general plan, the Beach Management Plan, the Reservoir Management Plan and the City's Chesapeake Bay Preservation Area Program Supplement, adopted on March 11, 2003, staff finds that the City's Phase II program is a comprehensive and well documented analysis of the conditions in the City of Norfolk and serves as a solid base for future planning efforts.

Mr. Belo concluded his comments noting that the Southern Area Review Committee, which met on August 12, 2003, agreed with the staff analysis and recommended that the City of Norfolk's Phase II program be found consistent with the Chesapeake Bay Act and Regulations.

Mr. Davis asked if there were any questions of Mr. Belo. There were none.

Mr. Davis called for a motion.

Mr. Cowling motioned to find the City of Norfolk's Phase II program consistent with §10.1-2109 of the Act and § 9VAC10-20-60.3 of the Regulations

**CHESAPEAKE BAY LOCAL ASSISTANCE BOARD**

**September 15, 2003**

**RESOLUTION**

**LOCAL PROGRAM - PHASE II**

**CITY OF NORFOLK - #36**

**Determination of Consistency – Consistent**

WHEREAS § 10.1-2109 of the Chesapeake Bay Preservation Act states that counties, cities, and towns in Tidewater Virginia shall incorporate protection of the quality of state waters into each locality's comprehensive plan; and

WHEREAS § 9VAC10-20-60 of the Chesapeake Bay Preservation Area Designation and Management Regulations states that the element in subsection 3 shall be adopted by local governments; and

WHEREAS § 10.1-2103.10 of the Chesapeake Bay Preservation Act authorizes the Board to take administrative and legal actions to ensure compliance by counties, cities, and towns with the provisions of the Act; and

WHEREAS the City of Norfolk adopted a comprehensive plan in 1992, with amendments through March 11, 2003; and

WHEREAS staff has reviewed the City of Norfolk's comprehensive plan and its various components for compliance with the Act and Regulations; and

WHEREAS on August 12, 2003, the Local Program Review Committee for the Southern Area considered and evaluated the information contained in the staff report and supplemental information provided by the City and concurred with the staff recommendation as outlined in the staff report; and

WHEREAS after considering and evaluating the information presented on this date, the Board agrees with the recommendations in the staff report and of the Review Committee; now

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds the City of Norfolk's comprehensive plan consistent with § 10.1-2109 of the Act and § 9VAC10-20-60.3 of the Regulations

The Director of the Chesapeake Bay Local Assistance Department certifies that this resolution was adopted in open session on September 15, 2003 by the Chesapeake Bay Local Assistance Board.

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C. Scott Crafton  
Executive Director  
Chesapeake Bay Local Assistance Department

Mr. Mendelsohn seconded the motion. Mr. Davis called for the vote. All members voted aye.

Mr. Belo provided the Board with an update on James City County. He explained that James City County was required to have updated their Phase II program by September 15, 2003. He noted that the County adopted updates to their Comprehensive Plan on August 12, 2003 and that a full staff report would be given to the Board at its December 8, 2003

Mr. Davis asked Mr. Belo if he had an opportunity to review the document. Mr. Belo responded that he had reviewed it and as far as he could tell there are no problems. He said that due to time constraints related to internal Department review requirements it had been impossible to get a full staff report before the Board at this meeting.

Mr. Davis thanked Mr. Belo for his reports, noted that no action was required by the Board for James City County, and called for the presentation of Local Program Reviews and recognized Ms. Nancy Miller for staff's presentation for the compliance evaluation for Gloucester County.

Ms. Miller said that Mr. Ron Peaks, the Director of the Gloucester County Division of Codes Compliance was present and would be available to answer any questions. She began her presentation explaining that Gloucester County was one of the first compliance evaluations to be conducted.

Ms. Miller explained that the Department initiated the compliance evaluation process for Gloucester County on March 4, 2003, and through the evaluation the Department has determined that the County is generally enforcing its Bay Act program in an appropriate manner.

She noted that Gloucester County has an extensive amount of shoreline and associated RPAs and a jurisdiction-wide RMA. She said the County employs a proactive approach, providing site visits and advising property owners on how to meet the local program requirements in order to meet the requirements of the Act and Regulations. She said the County maintains a strict policy of denying those applications that do not, and exceptions are granted only when sufficient justification exists, typically a hardship situation.

Ms. Miller went on to explain that the five Recommendations included in the draft staff report are associated with the County's program elements that do not comply with the Act and Regulations. These include: documentation of the submission of Water Quality Impact Assessments; and proposed subdivision review for compliance with the local Bay Act program requirements. At this point Ms. Miller stopped to explain that the County typically reviews major subdivisions for compliance with the County's Bay Act program requirements, however this policy did not formally extend to minor subdivisions; those which include three or fewer lots. She also explained that a minor subdivision was recently approved, without this review, and that it will be difficult to develop in compliance with the County's Bay Act program requirements. She said to avoid this staff recommended that the County require Environmental Division review on all proposed subdivisions, both major and minor.

Ms. Miller said other recommendations included: documentation of site conditions, applications and County actions, and better documentation of files; development and implementation of a five year septic tank pump-out notification and enforcement program; and development of a BMP tracking database.

Ms. Miller said that staff would continue to work closely with the County's Environmental Division staff to address the five compliance items, and that several of the items are already a part of the Environmental Division's planned work activities. She said the County's proactive approach is the keystone to an exemplary local program and the recommendations simply seek to enhance and support it.

Ms. Miller closed her comments noting that staff recommended that the Board find that certain aspects of the County's program do not comply with the Act and Regulations and that the County undertake and complete the five recommendations no later than September 30, 2004.

Mr. Davis asked if there were any questions of Ms. Miller. Mr. Davis commented that it was important to note that during the Northern Area Review Committee meeting, Ms. Miller gave a very detailed, good report and there was substantial discussion about the type of finding

the Board would have. He explained that it was decided to use the words 'not fully consistent' rather than a finding of inconsistent.

Mr. Nice asked why it was going to take another year to address these five recommendations.

Mr. Peaks responded that he was the Director of Codes Compliance for the County, and he advised that, although he did not have in hand a list of the five recommendations in order to respond to each, one of the things the County was trying to work through is the pump-out notification requirement in cooperation the local health department. He said they were trying to develop a system to find out who has septic systems and how to get in touch with them by using information the County has been provided by the pump-out services providers. He said the BMP database should not take very long but felt comfortable with the September 2004 deadline for that as well. He also noted that the County policy had already been changed to include review of minor subdivisions for Bay Act program compliance and that the instance cited in the staff report was the result of a coordination oversight.

Mr. Davis commented that Mr. Peaks had recently lost one of their senior staff members, due to a job change. Mr. Peaks responded that was correct, and they were doing their best to retain these individuals. Mr. Peaks said that while this affects the timetable, the County was comfortable with the recommendations and the time provided to accomplish them. Mr. Davis thanked Mr. Peaks for his comments.

Ms. Miller added that the County had been working on developing their environmental database. She said they already gather septic and pump out information and this is a step ahead of a number of localities. She said the County staff have had problems with the GPS instruments which record the database information and problems with securing this information routinely, and based on these issues, the County needed until September 2004 in order to complete the recommendations. Mr. Peaks thanked Ms. Miller and confirmed this information, and commented that the County was pleased to be one of the first reviewed for compliance.

Mr. Cowling complimented Mr. Peaks about the County's pump-out system and stated that he hoped all the localities acquire this program. He noted that he had been in a meeting recently where it was said that one bad septic system does more damage than 50 acres of bad waterfront farming.

Mr. Peaks commented that the County has been able to establish a good relationship with pump-out companies for all those who have a business license. He said they have been sending information on a monthly basis. He also complimented the assistance they are getting from the Health Department.

Mr. Davis thanked Mr. Peaks for his comments and asked if there were any other questions. There were none.

Mr. Davis called for a motion. Mr. Mendelsohn motioned to find that certain aspects of the County's implementation of its Phase I program do not fully comply with §§10.1-2109 and

2111 of the Act and §§9 VAC 10-20-231 and 250 of the Regulations and further that Gloucester County undertake and complete the two recommendations contained in the staff report no later than September 30, 2004.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD  
September 15, 2003  
RESOLUTION  
LOCAL PROGRAM COMPLIANCE EVALUATION  
GLOUCESTER COUNTY - #38  
Local Compliance Evaluation - Conditional

WHEREAS §10.1-2103 of the Chesapeake Bay Preservation Act states that Chesapeake Bay Local Assistance Board shall take administrative and legal steps to ensure compliance by counties, cities and towns with the provisions of the Chesapeake Bay Preservation Act, including the proper enforcement and implementation of, and continual compliance with the Act; and

WHEREAS §9VAC 10-20-250.1.b of the Regulations required the Board to develop a compliance evaluation process for evaluating local Bay Act compliance; and

WHEREAS the Chesapeake Bay Local Assistance Board adopted a compliance evaluation process on September 16, 2002 for the purposes of reviewing local Bay Act compliance; and

WHEREAS in July 2003, the Chesapeake Bay Local Assistance Department conducted a compliance evaluation of Gloucester County's Phase I program in accordance with the adopted compliance evaluation process; and

WHEREAS on August 12, 2003 the Local Program Review Committee for the Northern Area considered and evaluated the information contained in the compliance evaluation staff report and concurred with the staff recommendation as outlined in the staff report; and,

WHEREAS after considering and evaluating the information presented on this date, the Board agrees with the recommendation in the staff report and of the Review Committee; now,

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds that the implementation of certain aspects of Gloucester County's Phase I program do not fully comply with §§10.1-2109 and 2111 of the Act and §§9VAC 10-20-231 and 250 of the Regulations, and in order to correct these deficiencies, directs that Gloucester County undertake and complete the five recommendations contained in this staff report no later than September 30, 2004.

As required by Section 5.5-11. of the County's CBPA Ordinance, the County must document submission of a WQIA for any proposed development or redevelopment within RPAs, and for development in RMAs when required by the Director of Codes Compliance.

The County must require a review for all proposed subdivisions, both major and minor, to determine compliance with the County's CBPA Ordinance requirements prior to approval.

The County should begin to keep more complete files on all RPA exception requests and administrative waiver requests to include all site visit notes, staff recommendations, Board actions/minutes, WQIA related materials when required, and other related materials to ensure that a complete record of all requests are available for review and to ensure that all required conditions have been met.

The County must develop and implement a 5-year pump-out notification and enforcement program, and, if desired, revise the CBPA Ordinance to allow for the installation of the filter and/or inspections, including any necessary tracking information, for compliance with Section 9VAC 10-20-120.7.

The County must complete the development of a BMP database to track type, installation date, location, inspections and maintenance to satisfy Section 9VAC 10-20-120.3 of the Regulations.

BE IT FINALLY RESOLVED that failure by Gloucester County to meet the above established compliance date of September 30, 2004 will result in the local program becoming noncompliant with §§10.1-2109 and 2111 of the Act and §§9VAC 10-20-231 and 250 of the Regulations and subject Gloucester County to the compliance provisions as set forth in §10.1-2103.10 of the Act and §9VAC10-20-250 of the Regulations.

The Director of the Chesapeake Bay Local Assistance Department certifies that this resolution was adopted in open session on September 15, 2003 by the Chesapeake Bay Local Assistance Board.

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C. Scott Crafton  
Executive Director  
Chesapeake Bay Local Assistance Department

Mr. Nice seconded the motion.

Mr. Davis called for the vote. All members voted aye.

Mr. Davis commented that Ms. Miller had presented Gloucester County's compliance evaluation analysis to the Northern Area Review Committee and he again wanted to publicly compliment her for providing such a thorough and impressive review.

Mr. Davis recognized Ms. Shawn Smith for the compliance evaluation for the Town of Cape Charles.

Ms. Smith noted that she had provided an overview of the compliance evaluation process to the Northern and Southern Area Review Committees and proceeded to provide a brief

overview of the process, noting that the Board had approved the process in September of last year. She noted that the approved process entailed a number of meetings between Department and local staff. She stated that the first of these meetings is an information-gathering meeting and that subsequent meetings were held to review representative site plans, and that other meetings were held to review development in the field. She noted that the compliance review process is very complex and time consuming. She said that the purpose of the compliance evaluation process is to evaluate how a local Phase I program has been implemented at the local level for the last ten years. She said that the Department expects that each locality will have conditions for full compliance. She also noted that the deadlines for addressing compliance conditions may be varied, with some conditions having a shorter time frame than others.

Ms. Smith commented that she and Ms. Miller's presentation for Gloucester County were the first to undergo a comprehensive review, and four additional reviews were underway and the Department was working to bring those to the Board at its December meeting.

Mr. Mendelsohn asked Shawn to explain the schedule for completion of the compliance reviews. She said she anticipated focusing on reviewing the programs of the twenty-nine counties, and seventeen cities first. She said the review of most of the towns would occur after the cities and counties have been reviewed as many towns lack staff and development pressures are not as intense. Ms. Smith commented that each liaison would probably do two or three a year, and it is important to note that this figure depended on the level of complexity of the locality's program. She suggested that review of Prince William County's program would be difficult because of its complexity, whereas review of Accomack County may be undertaken faster.

Mr. Crafton commented the Regulations are set up so that these reviews are on a five year cycle to coincide with the five year update required for local comprehensive plans. He went on to say that if you divide eighty-four by five years, you have the number that the staff is trying to achieve. He went on to say staff is a little behind schedule due to the delayed submission of local ordinance submissions.

Mr. Davis asked if he understood correctly that staff would actually go to a locality for a site visit. Ms. Smith responded that the compliance evaluation process includes two check lists; one that staff completes and the other that the locality completes. She said at the first meeting, these two check lists are reviewed and any gaps in information are recorded and a schedule is decided when all information will be received by staff. She said staff will go back later to review site/field investigation sheets. She said these investigations cover all types of development from residential to commercial and site visits will be scheduled to review at least one of these different development types. She said the site visit is based on staff's knowledge of that locality and the focus is to evaluate the most prevalent development types occurring in a locality, in order to assess how well that locality is implementing its Bay Act program.

Mr. Mendelsohn asked if staff ever meets with the public or if these meetings are just with locality staff. Ms. Smith responded that she would meet with the public elected officials if requested, but that the current process focuses on meeting with local staff.

Mr. Mendelsohn responded that the reason he asked was that in his jurisdiction one might get a different view from these individuals, as opposed to local staff.

Ms. Little explained that complaints from citizen groups are reviewed and files are kept to provide for follow up and that these files are reviewed as part of the compliance evaluation process. Ms. Smith commented that, in addition to official complaints, staff also receive numerous unofficial complaints, which usually means that staff receives a telephone call about a situation or concern. She explained that this information is also taken into consideration and later reviewed with the locality staff. Ms. Smith also commented that staff has a good understanding about what is going on in their assigned localities and that this is an advantage to having one staff member assigned to specific localities.

Mr. Crafton noted the importance of the evaluation process as a means to review how the program, after all these years, is actually working. He said this process will allow the agency to see if these things are being implemented the way the Regulations and the Board intended. He used the Pole Cat Creek Water Monitoring Program as an example of being able to scientifically assess whether changes on the land impact water quality, and similarly, the compliance review program will provide the information needed to assess the program's effectiveness.

Mr. Davis asked Ms. Smith to continue with staff's presentation for the Town of Cape Charles.

Ms. Smith explained the Compliance Evaluation Process for Cape Charles began earlier in the year. She said there were two meetings with Town officials and as a result two checklists, review site plan files, and site visits. She said the report summarized the findings of the compliance evaluation, and found the Town is implementing its program in an appropriate manner.

She said that there are two recommendations for full compliance. The first recommendation related to the development of organized BMP tracking and maintenance program, and the other related to enforcement of the septic pump-out requirement. She explained that because of the limited number of recommendations, the Department recommended a deadline of September 30, 2004, and the Southern Area Review Committee concurred with the recommendations at the August 12, 2003 meeting. She said that Cela Burge, Town Manager for Cape Charles was at the Southern Area Review Committee however, but was not able to attend today's meeting.

Mr. Davis called for any questions of Ms. Smith. There were none.

Mr. Davis called for a motion. Mr. Cowling motioned to find that certain aspects of the Town of Cape Charles' implementation of its Phase I program do not fully comply with §§10.1-2109 and 2111 of the Act and §§9VAC 1-20-231 and 250 of the Regulations and further that the Town of Cape Charles undertake and complete the two recommendations contained in the staff report no later than September 30, 2004.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

September 15, 2003  
RESOLUTION  
LOCAL PROGRAM COMPLIANCE EVALUATION  
TOWN OF CAPE CHARLES - #14  
Local Compliance Evaluation - Conditional

WHEREAS § 10.1-2103 of the Chesapeake Bay Preservation Act states that Chesapeake Bay Local Assistance Board shall take administrative and legal steps to ensure compliance by counties, cities and towns with the provisions of the Chesapeake Bay Preservation Act, including the proper enforcement and implementation of, and continual compliance with the Act; and

WHEREAS §9VAC 10-20-250.1.b of the Regulations required the Board to develop a compliance evaluation process for evaluating local Bay Act compliance; and

WHEREAS the Chesapeake Bay Local Assistance Board adopted a compliance evaluation process on September 16, 2002 for the purposes of reviewing local Bay Act compliance; and

WHEREAS in Spring of 2003, the Chesapeake Bay Local Assistance Department conducted a compliance evaluation of the Town of Cape Charles' Phase I program in accordance with the adopted compliance evaluation process; and

WHEREAS on August 12, 2003 the Local Program Review Committee for the Southern Area considered and evaluated the information contained in the compliance evaluation staff report and concurred with the staff recommendation as outlined in the staff report; and,

WHEREAS after considering and evaluating the information presented on this date, the Board agrees with the recommendation in the staff report and of the Review Committee; now,

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds that the implementation of certain aspects of the Town of Cape Charles' Phase I program do not fully comply with §§10.1-2109 and 2111 of the Act and §§9 VAC 10-20-231 and 250 of the Regulations, and in order to correct these deficiencies, directs the Town of Cape Charles to undertake and complete 2 recommendations contained in this staff report no later than September 30, 2004.

The Town should develop a database or other appropriate method of tracking BMP installation as well as regular maintenance activities as required under §9VAC 10-20-120.3 of the Regulations.

The Town must implement its 5-year pump-out notification and tracking program for compliance with §9VAC 10-20-120.7.a.

BE IT FINALLY RESOLVED that failure by the Town of Cape Charles to meet the above established compliance date of September 30, 2004 will result in the local program becoming noncompliant with §§10.1-2109 and 2111 of the Act and §§9 VAC 10-20-231 and 250

of the Regulations and subject the Town of Cape Charles to the compliance provisions as set forth in §10.1-2103.10 of the Act and §9VAC10-20-250 of the Regulations.

The Director of the Chesapeake Bay Local Assistance Department certifies that this resolution was adopted in open session on September 15, 2003 by the Chesapeake Bay Local Assistance Board.

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C. Scott Crafton  
Executive Director  
Chesapeake Bay Local Assistance Department

Mr. Mendelsohn seconded the motion.

Mr. Davis called for the vote. All members voted aye.

Mr. Cowling commented the Board should probably be made aware that Cape Charles, several years ago, had a major enforcement action to take place under VMRC and Bay Act Regulations against a large developer and it made a believer out of everyone.

Mr. Davis thanked Ms. Smith for staff's report and recognized Mr. Scott Crafton to present the Review of Board Sponsored Activities.

Mr. Crafton provided an overview of the changes that had been made to the Guidance Document entitled "Determinations of Water Bodies with Perennial Flow" and further explained that the guidance document would be going back to the Ad Hoc Committee for further discussion pertaining to ditches. He explained that all four guidance documents had gone back to the Policy Committee for review on August 26, 2003.

He said the first guidance document had been under development since late spring, and had been discussed at two Ad Hoc Committee Meetings. He said the Policy Committee discussed this matter at their meeting in June, and there were some outstanding questions about how ditches might be regulated under this guidance. He said prior to the August 26, 2003 meeting, several paragraphs were added to address ditches in three different settings: Ditches appurtenant to roadways, ditches in agricultural settings, and ditches used for flood control. He went on to explain that at the August 26, 2003 meeting it was decided that there might be other types of ditches that had not been addressed. Even so, the Policy Committee agreed that with the edits that have already been made, the document was suitable for approval with a caveat that the Ad Hoc Committee would further revisit the ditch issue and provide feedback. He commented that these changes would not prevent the guidance document from being approved.

Mr. Crafton noted that the change Mr. Cowling requested was made on Page 2, second paragraph, "...RPA features such as nontidal wetland or contiguous and connected to other RPA features." On Page 3, discussion indicated the bulleted items are not appropriate in the definition, so they have been stricken and are referred to in the discussion. At the bottom of

Page 3, in the discussion of ditches, the changes are the addition of wording to indicate that buffers are not required in those settings. On Page 4, the third paragraph has been stricken, and on Page 7, the word “definitively” has been changed to “generally”. On Page 8, second paragraph the sentences have been stricken.

Ms. Little pointed out also in the second paragraph on Page 8, the sentence “Such a map is assumed to be accurate.” should be stricken.

Mr. Davis commented that the document had gone through the process and has been endorsed. He recommended approval.

Mr. Davis called for a motion. Mr. Mendelsohn motioned to approve the Guidance Document entitled Determinations of Water Bodies with Perennial Flow and incorporated the change that Ms. Little pointed out.

Mr. Davis called for public comment. There was none. Mr. Cowling expressed his gratitude and admiration for Mr. Baxter who managed to get the Chesapeake Bay Foundation and the Home Builders and bureaucrats from around the state to produce a document that is very positive and is a credit to his management skills. Mr. Baxter thanked Mr. Cowling for his kind remarks, and complimented CBLAD’s staff.

Mr. Cowling seconded the motion.

Mr. Davis called for the vote. All members voted aye.

Mr. Davis commented to the members his desire to continue to serve as the Board’s representative on the Ad Hoc Committee. All members agreed to his continued service on the Ad Hoc Committee.

Mr. Cowling asked if Mr. Baxter could look into the highway situation on the Eastern Shore, their resident engineer, Mr. Cummings, is saying under current guidelines he cannot clean a number of ditches that are actually away from the highway. He said the net result has been substantial agriculture flooding. He said that Northampton’s Board of Supervisors have declared an agricultural disaster triggering a cost of millions in low interest loans. He said he thought Accomack County would be doing the same thing. He said that the ditch issue needed to be sorted out not only for environmental reasons but for the cost of taxpayers and individual farmers.

Mr. Crafton explained the Administrative Guidance Document was another document the Ad Hoc Committee had worked on and the changes are identical regarding ditches. He said the changes could be found on Pages 5 and 6.

Ms. Little commented that there was also a minor change on Page 3 that changes the words enlargement or addition to modification.

Mr. Davis called for any questions. There were none. Mr. Davis called for the motion. Mr. Mendelsohn motioned and Mr. Cowling seconded to approve this guidance. Mr. Davis called for the vote. All members voted aye.

Mr. Davis called for consideration of the Guidance Document, Resource Protection Areas: Permitted Development Activities. Mr. Crafton explained this document came before the Board in the winter, and conversations with John Matthews, a marina consultant, indicated his belief that the dictionary definition of marinas included accessory structures. Mr. Crafton went on to say that the issue regarding non-water dependent components had brought about a closer look at the permitted uses. Mr. Crafton explained that a review of the Regulations revealed that accessory structures have never been permitted within the RPA but, nonetheless, he visited a marina in Maryland and found that Maryland also provides that accessory structures be placed behind the buffer. However, in the case of older marinas, the same issue that Mr. Matthews raised exists, where these marinas are often land locked, and it may be necessary to place accessory structures in the buffer area. He noted that there is a definite interest in providing additional flexibility to existing marina owners over and above the owner's ability to request a formal exception. He suggested that a review of the Regulations in 2004 could provide some relief for marina owners. He noted that staff had spoken with the State of Maryland and found that they do allow localities to designate buffer exempt areas. He suggested that he was very interested in including this kind of language in the next Regulation amendments.

Mr. Mendelsohn questioned whether these exemptions represented expansions or renovations. Mr. Crafton responded the exemptions could address both situations.

Mr. Cowling asked if marinas dating prior to 1989 were grandfathered and whether the flexibility that is being considered would be for localities. Mr. Crafton agreed. Ms. Little explained if the project is redevelopment, that such projects are permitted by right and would not need an exception. Ms. Smith added that this flexibility would apply to those marinas where there was already an existing impervious area and that any expansion that would occur over that existing impervious area is permitted. But she cautioned that if the expansion was into an undisturbed natural area, such an expansion would not be permitted by right under the Regulations; an exception would be needed.

Mr. Davis called for public comment. There was none. Mr. Davis commented that this subject had been well covered and called for a motion. On a motion by Mr. Cowling, seconded by Mr. Mendelsohn, the Guidance Document regarding Permitted Development Activities was approved.

Mr. Crafton opened discussion regarding the Riparian Buffers Modification and Mitigation Manual. Mr. Crafton explained that in some instances, the original draft of the Manual appeared to exert more authority than is provided in the Regulations. At the August 26, 2003 Policy Committee Meeting, there was substantial discussion about the changes that needed to be made to the document.

Mr. Mendelsohn commented that Mr. Cowling had brought to Policy Committee's attention other issues that needed to be addressed. Mr. Crafton went on to explain that the

changes had been completed and provided a list of those changes to the members. The list is attached.

Mr. Cowling suggested that a cover letter accompany the manual that emphasizes points made in the Preface, and he recommended that this guidance document become a true living document and that it be presented to the localities in loose notebook form, so that as changes are made they can be provided to the localities on a page-by-page basis.

Mr. Davis called for further comments. Mr. Crafton asked if the Board would approve staff to make any grammatical and layout changes that may be found later. The Board agreed.

Mr. Davis called for Public Comment. Mr. Toalson commented that the Home Builders Association of Virginia thanked staff and the Policy Committee and stated that he believed the working relationship had been strengthened.

Mr. Davis called for the vote. Mr. Mendelsohn motioned to approve the document and all non- substantive editorial comments, grammatical and layout changes that may be needed. Mr. Nice seconded. Mr. Davis called for the vote. All members voted aye.

Mr. Davis thanked the Policy Committee, staff and Mr. Crafton for all the work that had gone into the creation of the buffer guidance. He asked Mr. Crafton to continue with Other Discussion Items.

Mr. Crafton explained that Mr. John Carlock, Hampton Roads Planning District Commission, at the August 26, 2003 Policy Committee meeting, made an official request that the Board provide a definition of new or expanded Intensely Developed Areas (IDAs) particularly regarding the phrase “a little of the natural environment remains”. He explained that this issue will be given consideration by the Ad Hoc Committee, and the Department will be in a position to provide localities with this clarification so that they can address IDAs in their ordinances prior to the December 31, 2003 deadline.

Mr. Mendelsohn commented that this issue is different in Tyson’s Corner than it is in Hampton Roads, and perhaps size or geographic areas should be considered, which is not easy. Mr. Davis commented that is why the Board is not going to take any action or make any recommendation at this time and would rather have the issue studied further.

Mr. Crafton explained the discussion item, Shorelands Project, noting that this is another issue that is difficult and should be studied. Ms. Little provided a summary of the project noting that it is a tool for local governments to use for long range planning and development along shoreline areas assessing adjacent resources in order to plan for a development suitability index. She said staff was doing this through a coastal grant in conjunction with VIMS. She said VIMS would be developing the protocol and it will be an Arc View GIS-based tool. She said CBLAD’s role is to provide input as well as to develop a user-friendly technical document to be used with the protocol. She said that some localities would be able to use this information in their comprehensive plan when dealing with shoreline issues, although they will not be required to use it.

Mr. Crafton commented that localities will use this document to access which properties could be developed with the least impact, and provide information regarding what kinds of mitigation would be needed. He said the document is not a “can’t develop” tool but rather a tool to encourage development with fewer impacts. He also noted that the tool is different than other types of guidance.

Ms. Little added that there are committees working on this project. Mr. Mendelsohn commented that the document is not regulatory but rather a helpful tool.

Mr. Davis commented that there was no need for a motion that staff continue with further study, and he doesn’t believe public comment needs to be taken. He asked that both issues be brought before the Board in December. Mr. Mendelsohn commented that he would not be available to attend the December meeting.

Mr. Davis called for public comment. Mr. Ron Peaks thanked Ms. Smith and Ms. Miller for their assistance. He expressed pride in the fact that Gloucester was one of the first localities selected to undergo a compliance evaluation.

Mr. Davis thanked Ms. Miller publicly for providing such an in-depth report for the County of Gloucester.

Mr. Davis called for a motion to adjourn the meeting. Mr. Mendelsohn motioned and Mr. Cowling seconded to adjourn the meeting. There being no further business, the meeting was adjourned at 11:40 a.m.

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Donald W. Davis  
Chairman

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C. Scott Crafton  
Executive Director